



# A NEW EU ENVIRONMENTAL CRIME DIRECTIVE

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Environmental crimes are the third most lucrative crime category globally, costing between approximately EUR 96 and EUR 246 billion<sup>1</sup> annually. In 2008, the first EU Environmental Crime Directive was adopted, aiming at providing a harmonised framework to address and facilitate cross-border cooperation in the fight against environmental crimes in the European Union.

In 2019 and 2020, the European Commission conducted an evaluation of the law and WWF provided input for the development of a revised Directive. The evaluation concluded that several shortcomings had prevented the effective implementation of the Directive, with environmental crimes remaining largely under-detected, under-reported and under-investigated, and with sanction levels too low to be dissuasive. In the meantime, environmental crimes continued to grow at an estimated annual rate of 5% to 7% globally, two to three times the rate of the global economy<sup>1</sup>.

In December 2021, the European Commission presented its proposal for a revision of the Environmental Crime Directive, which represents an opportunity to provide the EU and Member States with the means to fulfil their commitments towards environmental protection. **It is therefore important to support the development and adoption of a strong and ambitious Directive that will effectively step up the fight against environmental crimes.**

## WWF calls on the European Parliament and Member States to:

1. Secure the proposal's improvements, notably the broader and updated scope, sanction levels, holistic approach to fighting environmental crimes, evaluation and reporting provisions, and recognition of the role of environmental defenders and NGOs;
2. Extend the scope of the proposal to ensure that all relevant legislation related to environmental crimes is covered;
3. Clarify the terms used to define environmental crimes;
4. Extend the scope of and establish dissuasive sanction levels;
5. Strengthen provisions on the Directive's implementation to make it more effective in fighting environmental crimes.

<sup>1</sup> Nellemann, C.; Henriksen, R., Pravettoni, R., Stewart, D., Kotsovou, M., Schlingemann, M.A.J, Shaw, M. and Reitano, T. (Eds). 2018. World atlas of illicit flows. A RHIPTO-INTERPOL-GI Assessment. P.15

## SECURING THE PROPOSAL'S PROMISING ELEMENTS

WWF welcomes the Commission's proposal which addresses the recommendations WWF made during the consultation process. In particular, the **introduction of a common minimum denominator for sanctions**, applicable to the offences covered under the Directive, represents a major step forward that will ensure that environmental crimes are taken seriously and that dissuasive and harmonized sanctions apply in the European Union.

The proposal is substantially more comprehensive than the current Directive, covering not only offences and sanctions, but **investigative techniques, training, cooperation, resources, strategy, and data collection** too. It is very positive to see that the proposal contains **evaluation and reporting provisions** that will enable following-up on its transposition and implementation by Member States. WWF also salutes the broadening of the scope of the Directive, which now includes the **EU Timber Regulation (EUTR)**, and the **recognition of the role of environmental defenders and non-governmental organizations** in the fight against environmental crimes. Indeed, environmental defenders, also recognised as environmental human rights defenders, play a crucial role in identifying and tackling environmental crimes. However, they face increasing levels of threat and violence, including threats to their lives. Member States have the responsibility to enable them to operate peacefully, to protect them, and ensure access to justice and remedy when their rights are violated.

WWF would like to emphasise the importance of securing the above-mentioned progress, and ensuring that none of these new elements is weakened in the upcoming negotiations between the Council, European Parliament and European Commission.

WWF recommendations made during the consultation	Inclusion	Proposal's articles
1. Address and close the gaps in the implementation of the Directive, increase financial and specialized human resources to address environmental crimes and improve inter-agency collaboration through adequate financing and training of staff		<i>Article 16, Article 17, and Article 19</i>
2. Improve the monitoring of the implementation of the directive and make data on levels of prosecutions and sentencing available		<i>Article 20, and Article 21</i>
3. Ensure a sufficiently high and dissuasive level of sanctions for all environmental crimes, especially those involving organized crime		<i>Article 5, Article 7, and Article 8</i>
4. Further completing the legislation covered by the Directive, by considering adding the EU Timber Regulation in the scope of the Directive		<i>Article 3 (1) (n)</i>
5. Facilitate better cooperation between and within Member States for investigations on transnational crimes or in the case of convergence with other forms of criminality, such as financial crime, money-laundering, and corruption		<i>Article 12 (2), Article 18, and Article 19</i>

## STRENGTHENING THE PROPOSAL

Despite these positive elements, WWF considers that there is room for improvements in the proposal regarding its scope, the clarity of certain definitions, the level and scope of sanctions, and its implementing provisions.

### Scope

As there is no autonomous definition of environmental crime, it is important to make sure that all relevant legislation related to environmental crimes is covered in Article 3 (1) of the proposal.

- The entire marine environment should be protected from source-ship discharges of polluting substances as per Directive 2005/35/EC;
- Import of species listed under Annex C of the Wildlife Trade Regulations should be covered by the Directive;
- Breaches of the Birds and Habitats Directives in cases of serious negligence and attempt should be covered by the Directive;
- Serious infringements of illegal, unreported and unregulated fishing as per Regulation (EC) No 1224/2009 and Regulation (EC) No 1005/2008 should be covered under the Directive; and
- A provision enabling the timely update of the Directive should be included to maintain it up to date whenever new and relevant EU legislation is introduced.

### Definitions

This proposal was developed with the aim, among others, to clarify and eliminate vague terms used in the definitions of environmental crimes. Some definitions still need to be improved to provide more legal clarity.

- The monetary value of the damage, the conservation status of the species affected, and the habitat affected should be additional criteria defining what constitutes substantial damage; and
- The scale of the financial benefits gained by committing the offense, and whether or not the offense was committed by an organized criminal group should be additional criteria defining what constitutes negligible quantity.

### Sanction

Having harmonised and dissuasive sanction levels is crucial to efficiently fight against environmental crimes. Hence, the Directive needs to provide for strong sanction levels and with a scope that reflect the reality and challenges of fighting against environmental crimes.

- In the case of sanctions relating to offences committed by legal persons, the proposed minimum standard should be increased, so that maximum sanction of 15% of annual turnover is stipulated;
- Legal persons should ensure that both human rights and environmental standards are included in due diligence mechanisms;
- Fines for both natural and legal persons should cover the cost of the recovery of the damage done; and
- Cases of crime convergence (e.g. financial crimes, corruption, drug trafficking, etc.), the conservation status of the species affected, and the level of protection of the habitat affected (e.g. Natura 2000 site) should constitute aggravating circumstances.

## Implementation

The proposal contains many provisions that will support the proper implementation of the Directive, in order to be effective, these provisions need to be as precise as possible, and reflect the challenges of fighting environmental crimes.

- Participation of the public concerned in proceedings should be guaranteed in all Member States;
- Information about judgments and state of proceedings should be made available to the public concerned;
- Proactive law enforcement tools (e.g. situational crime prevention), awareness raising targeting all relevant stakeholders (public, private sector, national authorities, etc.), and anti-corruption activities are important preventive tools against environmental crimes;
- Articles covering training and investigative tools should consider cybercrime and financial investigations;
- Member States should establish specialized coordination bodies for environmental crimes;
- Member States' statistical data should be made public annually and in raw version; and
- The jurisdiction of this Directive should be extended as much as possible to increase environmental protection.

### For more information

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